

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CHRISTOPHER MCCOWEN,)	
)	
Petitioner,)	Civil Action No.
)	11-12216-FDS
v.)	
)	
ANTHONY MENDOSA,)	
)	
Respondent.)	
)	

ORDER ON CERTIFICATE OF APPEALABILITY

SAYLOR, J.

This is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court has dismissed McCowen’s mixed petition for failure to exhaust state remedies. He can only appeal that dismissal if he receives a certificate of appealability. For the following reasons, the Court will certify the appealability of this dismissal as to the limited question of whether it was appropriate to lift the stay.

A certificate of appealability will issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). That standard is satisfied by “demonstrating that jurists of reason could disagree with the district court’s resolution of [petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). That standard must be independently satisfied as to “each and every issue raised by a habeas petitioner.” *See Bui v. DiPaolo*, 170 F.3d 232, 236 (1st Cir. 1999).

The Court concludes that jurists of reason could not disagree that petitioner has failed to

exhaust at least one of his claims. However, a jurist of reason might find that it was not appropriate to lift the stay, and so a certificate of appealability will be granted as to that limited issue.

Accordingly, a certificate of appealability is GRANTED with respect to the Court's decision to lift the stay and otherwise DENIED.

So Ordered.

Dated: June 25, 2018

/s/ F. Dennis Saylor
F. Dennis Saylor, IV
United States District Judge